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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION *E-FILED - 9/1/05*

DIRECTV, INC., a California corporation,

 Plaintiff,

 vs.

 MARIO BARAONA, et al.

 Defendants.

CASE NO. CV-03-4143 RMW

Hon. Ronald M. Whyte

**NOTICE OF NON-SETTLEMENT WITH
 DEFENDANT VICTOR NEBRES AND
 REQUEST TO RE-SET HEARING DATE
 FOR PLAINTIFF DIRECTV, INC.'S
 MOTION FOR DEFAULT JUDGMENT
 AGAINST DEFENDANT VICTOR
 NEBRES; ORDER**

TO THE CLERK OF THE NORTHERN DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that, although Plaintiff DIRECTV, Inc. ("DIRECTV") believed that an oral agreement to settle this matter had been reached with Defendant VICTOR NEBRES ("Defendant") and filed a Notice of Settlement in this action on March 31, 2005, Defendant has since refused to sign the written settlement agreement or to make any effort to comply with the terms of the agreement. Although DIRECTV's counsel has tried, in writing and by telephone, to contact Defendant concerning his failure to execute the agreement, Defendant has not responded. Accordingly, DIRECTV respectfully requests that the Court re-set the hearing date for DIRECTV's Motion for Default Judgment previously filed against Defendant.

On February 17, 2005, DIRECTV filed a Motion for Default Judgment against Defendant, which was set to be heard on April 1, 2005 at 9:00 a.m. Shortly before the hearing date, Defendant contacted DIRECTV's counsel for the first time and requested that DIRECTV settle

1 this matter. On or about March 31, 2005, counsel for DIRECTV and Defendant verbally agreed
2 to settle this matter and DIRECTV immediately filed a Notice of Settlement with this Court
3 Plaintiff's Motion For Default Judgment, therefore, did not proceed on April 1, 2005.

4 On April 1, 2005, DIRECTV sent to Defendant via facsimile a proposed Settlement
5 Agreement ("Agreement") and Stipulation for Entry of Judgment ("Stipulation") for his review
6 and execution. DIRECTV requested that the executed Agreement and Stipulation be returned on
7 or before April 15, 2005. Defendant did not contact DIRECTV to discuss the terms of the
8 settlement documents, nor did he return the executed documents. Although counsel for
9 DIRECTV has attempted to contact Defendant concerning his failure to return the documents,
10 Defendant has not responded.

11 As a result of Defendant's inaction and non-responsiveness, it appears that DIRECTV's
12 claims have not, in fact, been settled. Therefore, DIRECTV respectfully requests that the Court
13 re-set the hearing date for the Motion for Default Judgment previously filed by DIRECTV against
14 Defendant for a date on or after October 28, 2005 so that DIRECTV may move forward with
15 the prosecution of this action.

16 DATED: July 29, 2005

17 Respectfully Submitted,

18 BUCHALTER, NEMER, FIELDS & YOUNGER
19 A Professional Corporation

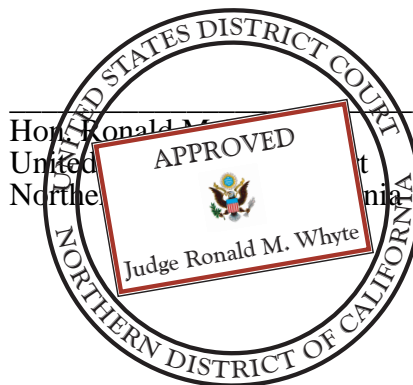
20 By: /s/ Brandon Q. Tran
21 Brandon Q. Tran
22 Attorneys for Plaintiff DIRECTV, Inc.
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ORDER

Having read the Notice of Non-Settlement with Defendant Victor Nebres and Request to Re-Set Plaintiff DIRECTV, Inc.'s Motion for Default Judgment Against Defendant Victor Nebres, and such other pleadings and papers deemed appropriate by the Court, and GOOD CAUSE appearing therefore, the Court ORDERS as follows:

1. Plaintiff DIRECTV, Inc.'s Motion for Default Judgment Against Defendant Victor Nebres will be heard on Friday, October 28, 2005 at 9:00 a.m.

DATED: 9/1/05



1 **PROOF OF SERVICE**

2 I am employed in the County of Orange, State of California. I am over the age of 18 and
 3 not a party to the within action. My business address is at BUCHALTER, NEMER, FIELDS &
 4 YOUNGER, A Professional Corporation, 18400 Von Karman Avenue, Suite 800, Irvine,
 5 California 92612-0514.

6 On July 29, 2005, I served the foregoing document described as: **NOTICE OF NON-
 7 SETTLEMENT WITH DEFENDANT VICTOR NEBRES AND REQUEST TO RE-SET
 8 HEARING DATE FOR PLAINTIFF DIRECTV, INC.'S MOTION FOR DEFAULT
 9 JUDGMENT AGAINST DEFENDANT VICTOR NEBRES** on all other parties and/or their
 10 attorney(s) of record to this action by placing a true copy thereof in a sealed envelope as follows:

11 *****SEE ATTACHED LIST*****

12 **[X] BY OVERNIGHT DELIVERY** On July 29, 2005, I placed the Federal
 13 Express/Overnite Express package for overnight delivery in a box or location regularly
 14 maintained by Federal Express/Overnite Express at my office, or I delivered the package to an
 15 authorized courier or driver authorized by Federal Express/Overnite Express to receive
 16 documents. The package was placed in a sealed envelope or package designated by Federal
 17 Express/Overnite Express with delivery fees paid or provided for, addressed to the person(s)
 18 on whom it is to be served at the address(es) shown above, as last given by that person on any
 19 document filed in the cause; otherwise at that party's place of residence.

20 **[X]** I declare that I am employed in the office of a member of the bar of this court at
 21 whose direction the service was made.

22 Executed on July 29, 2005, at Irvine, California.

23 _____
 24 Laura Urias

25 _____
 26 /s/ Laura Urias

27 (Signature)

SERVICE LIST

Victor Nebres
105 N. Jackson Ave., Suite 102
San Jose, California 95116